

REMARKS

The Examiner has rejected Claims 1-63 under 35 U.S.C. 103(a) as being unpatentable over Gampper et al. (hereinafter, "Gampper," 6,003,082) in view of Birdwell et al. (hereinafter, "Birdwell", 6,002,852). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove.

Specifically, applicant has amended each of the independent claims to include the former subject matter of Claims 3 and 4 et al. In particular, now claimed is a "download controlling message including at least one download qualifying parameter, wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses" (see all independent claims).

In order to make a prior art showing of such subject matter, the Examiner has relied on col. 8, lines 40-41, 55-60; col. 9, lines 32-35, 49-55; col. 10, lines 18-19, 37-40, and 44-53; and col. 13, lines 14-30 of Gampper.

After careful review of such excerpts and the remaining Gampper reference, however, it is noted that such excerpts merely suggest the tracking of time, user priority, etc. such that downloads may be effected at certain time periods and based on a user's priority, etc. There is simply no disclosure, teaching or even suggestion of any sort of "download controlling message including at least one download qualifying parameter, wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least one download qualifying parameter increases as time progresses, wherein a number of target computers not having said computer file decreases as time progresses" (emphasis added - see all independent claims).

NAIIP160/00.110.01

23

Only applicant teaches and claims such adjustment of the download qualifying parameter for increasing with time the probability that particular target computers will qualify for the computer file download and decreasing with time a number of target computers not having the computer file, in the context of the claimed invention. This adjustment technique is particularly beneficial for reducing the number of target computers not having the computer file, etc.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness have not been met, since the prior art references, when combined, fail to teach or suggest all the claim limitations. A notice of allowance or a specific prior art showing of such claimed features, in combination with the remaining claim limitations, is respectfully requested.

Applicant further notes that the Examiner's application of the prior art to the dependent claims is also replete with deficiencies. Just by way of example, the Examiner relies on col. 2, lines 39-45; col. 8, lines 27-47; and col. 10, lines 59-63 from Gampper to make a prior art showing of applicant's claimed "wherein said at least one download qualifying parameter is adjusted such that a number of target computers downloading said computer file in response to said broadcast message does not exceed a threshold level" (see Claim 5 et al.).

Such excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of downloading qualifying parameter adjustment that involves such threshold which governs the number of target computers downloading the computer file, as claimed.

Still yet, with respect to Claim 7 et al., the Examiner relies on col. 2, lines 39-45; col. 8, lines 27-47; and col. 10, lines 59-63 from Gampper to make a prior art showing of applicant's claimed "wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target computers to control whether or not said particular target computer qualifies to download said computer file."

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of target computer-generated quasi-random parameter that is used in combination with a qualifying parameter in the manner claimed.

Even still, with respect to Claim 9 et al., the Examiner relies on col. 10, lines 18-19, 37-40, 50-52; and col. 13, lines 14-20 from Gampper to make a prior art showing of applicant's claimed "wherein each target computer that qualifies to download said target file in response to said broadcast message initiates downloading at a time quasi-randomly selected within said range of time."

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of quasi-randomly selected time for downloading the target file within the range of time, as claimed.

With respect to Claim 11 et al., the Examiner relies on col. 2, lines 25-27, 37-40; col. 3, lines 57-59; col. 4, lines 2-11; col. 7, lines 14-16; and col. 8, lines 40-65 from

Gampper to make a prior art showing of applicant's claimed "wherein a target computer that has downloaded said computer file subsequently acts as a source computer."

These excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of a target computer (which has downloaded the computer file) subsequently acting as the source computer in the manner claimed.

Moving to Claim 12 et al., the Examiner relies on col. 6, lines 26-40; and col. 7, lines 42-50 from Gampper to make a prior art showing of applicant's claimed "wherein upon receipt of said computer file said target computer issues prompts seeking user input specifying how said computer file should be used."

After careful review of these excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, it is clear that there is absolutely no suggestion of any sort of prompting of the user for input regarding use of the computer file upon the receipt thereof, as claimed.

Regarding Claim 13 et al., the Examiner also relies on col. 6, lines 26-40; and col. 7, lines 42-50 from Gampper to make a prior art showing of applicant's claimed "wherein said computer file is a virus definition data file for use by an anti-virus computer program."

The Gampper reference does not even mention viruses, let alone a virus definition data file for use by an anti-virus computer program, as claimed.

Turning now to Claim 15 et al., the Examiner also relies on col. 2, lines 48-55; col. 9, lines 30-45; col. 10, lines 18-19, 27-40, 43-52; and col. 13, lines 14-20 from Gampper to make a prior art showing of applicant's claimed technique wherein "if said demand level is greater than said predetermined threshold level, then sending said retry message to said one of said plurality of target computers indicating a delay period after

which said one of said plurality of target computers may reissue said download request to said source computer; and upon expiry of said delay period reissuing said download request from said one of said plurality of target computers to said source computer."

Such excerpts and the remaining Gampper reference (as well as Birdwell, for that matter), however, make absolutely no suggestion of any sort of sending a retry message to a target computer indicating a delay period after which the target computer may reissue a download request to the source computer, and, upon expiry of the delay period, the download request being reissued from the target computer, in the manner claimed.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness have not been met, since the prior art references, when combined, fail to teach or suggest all the claim limitations. A notice of allowance or a specific prior art showing of such claimed features, in combination with the remaining claim limitations, is respectfully requested.

Reconsideration is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P160/00.110.01).

Respectfully submitted,

By: _____

Kevin J. Zilka
Reg. No. 41,429

Date: 10/21/04

Zilka-Kotab, P.C.
P.O. Box 721120

NAI1P160/00.110.01

27

San Jose, California 95172-1120
Telephone: (408) 971-2573
Facsimile: (408) 971-4660

NAIIP160/00.110.01

28